

Chapter 12
Category 11h
Project not Available to the General Public

Definition

This category is used to report properties that are not available to the general public. A residential rental unit is for use by the general public if the property conforms to the requirements of Treas. Reg. § 1.42-9. Under Treas. Reg. 1.42-9(b), if a residential unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for credit under IRC §42. The general public use rules are violated any time the general public is denied access to LIHC housings.¹ Residential rental units either designated for a single occupational group, or through a preference for an occupational group, also violate the general public use requirements.

In addition, any residential rental unit that is part of a hospital, nursing home, sanitarium, life care facility, retirement home providing significant services other than housing, dormitory, trailer park, or intermediate care facility for the mentally and physically disabled is not for use by the general public.

**Fair
Housing
Act**

LIHC properties are also subject to Title VIII of the Civil Rights Act of 1968, which makes it unlawful to discriminate in any aspect relating to the sale, rental, or financing of dwellings because of race, color, religion, sex, or national origin. The Fair Housing Act of 1988 expanded coverage of Title VIII to include familial status and disabilities. Notifications of administrative and legal actions in regards to the Fair Housing Act are also reported to the IRS using Form 8823. See chapter 13 for complete discussion.

In Compliance

Owners must rent their units in a manner consistent with the general public use requirements to be in compliance with IRC §42. Residential rental units must be for use by the general public and all of the units in a project must be used on a nontransient basis. Residential rental units are not for use by the general public, for example, if the units are provided only for members of a social organization or provided by an employer for its employees.

Out of Compliance

The failure of LIHC buildings to comply with the general public use requirements will result in the denial of low-income housing credits on a per-unit basis. A unit is out of compliance starting on the date of the event triggering the noncompliance. State agencies will also need to consider whether the problem is systemic and whether owner has met the minimum set-aside under IRC §42(g)(1). See chapter 10.

¹ General Explanation of the Tax Reform Act of 1986 (H.R. 3838, 99th Congress; Public Law 99-514.

Example 1: LIHC Units Restricted to Members of a Social Organization

The owner of an LIHC building started renting only to members of a local fraternal organization in the third year of the compliance period. By the fifth year, all the tenants in the building were members of the organization.

This building is in violation of the general public use requirements under Treas. Reg. § 1.42-9(b), which provides that a residential unit rented only to a member of a social organization is not for use by the general public and is not eligible for the credit under IRC §42. The noncompliance started on the date the first nonqualified tenant moved into a unit in the third year of the credit period.

Back in Compliance

The owner is back in compliance with the general public use requirements when two conditions are met:

1. The owner demonstrates that marketing and rental practices are no longer in violation of the general public use rules.
2. All the units are made available to the general public.

Example 1: Units Rented to Members of an Occupational Group

An owner placed a 100% LIHC building in service, began claiming the credit in 2000, and elected the 40/60 minimum set-aside. In 2002, when all 25 units were in compliance with qualifying households, the owner decided to rent units solely to teachers. Starting on January 21, 2002, five vacated units were rented to teachers. During 2003, the owner rented an additional 11 units to teachers. The issue was identified during the state agency's inspection in 2004.

The building is out of compliance as of January 21, 2002, when the first unit is rented to a teacher. The applicable fraction for 2002 is 20/25 or 80%. The applicable fraction for 2003 is 9/25 or 36%, and since the minimum set-aside was not met, no credit is allowable for 2003.

The building is back in compliance when:

1. The owner demonstrates that marketing and rental practices are no longer in violation of the general public use rules, and
2. All the units are made available to the general public.

References

Treas. Reg. §1.42-9